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Mailed: AUG 16 2004

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Paper No. 111

In re application of  
Chia-Tin Chung et al.  
Serial No. 09/730,904  
Filed: December 5, 2000  
For: METHOD FOR MANUFACTURING AN  
ORGANIC ELECTROLUMINESCENT DISPLAY

DECISION ON  
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed April 9, 2003, for failure to timely reply to the Office action dated September 18, 2002.

**DECISION**

Since petitioner asserts that the Office action was never received, the request qualifies as a petition under 37 C.F.R. 1.181 (no fee). A review of the petitioner's evidence provided with the instant petition indicates that the request has merit.

The requirements for granting a withdrawal of holding of abandonment are set forth as follows:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement

Additionally, the MPEP sets forth:

37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f).

Regarding late submissions under this section the MPEP states:

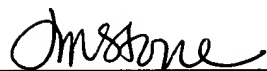
Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may treat an untimely petition to withdraw the holding of abandonment on its merits on the condition that, in any design application, any utility application filed before June 8, 1995, or any plant application filed before June 8, 1995, the petition is accompanied by a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period between the mail date of the notice of abandonment and the filing date of such petition to withdraw the holding of abandonment. See 37 CFR 1.183 (the Office may suspend or waive the requirements of 37 CFR 1.181(f), subject to such other requirements as may be imposed). The Office may treat an untimely petition to withdraw the holding of abandonment on its merits in a utility or plant application filed on or after June 8, 1995, on the condition that the petition is accompanied by a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted thereon that would extend beyond the date 20 years from the filing date of the application, or the earliest application to which the application specifically refers under 35 U.S.C. 120, 121, or 365(c). In either case, the terminal disclaimer must also apply to any patent granted on any application that claims the benefit of the filing date of the application under 35 U.S.C. 120, 121, or 365(c).

A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Office letter, mailed April 9, 2003. Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed April 9, 2003 and restarting of the period of response from the remail date thereof.

The term of a patent issuing from a utility or plant application filed on or after June 8, 1995 ends on the date that is twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. § 120, 121, or 365(c). Utility and plant applications filed on or after May 29, 2000, however, are eligible for patent term adjustment under the American Inventors Protection Act of 1999 (AIPA). Therefore, if a petition to withdraw a holding of abandonment is not filed within two months from the mailing date of the notice of abandonment, any patent term adjustment will be reduced under the provisions of 37 CFR 1.704(c)(4). If applicant does not receive the notice of abandonment, any patent term adjustment may be reduced under the provisions of 37 CFR 1.704(a) by a period equal to the period of time during which the applicant "failed to engage in reasonable efforts to conclude prosecution" (processing or examination) of the application, in which case any period of adjustment shall be reduced by the number of days, if any, beginning on the day after the date that is twelve months from the date of applicant's filing or submission of correspondence with the USPTO for which further action by the USPTO can reasonably be expected and ending on the filing date of a grantable petition to withdraw the holding of abandonment.

A terminal disclaimer accompanies the petition of September 12, 2003, however because of patent term adjustment it will not be necessary to consider the terminal disclaimer.

Therefore, the Petition is **GRANTED.**



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